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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

Writ Petition No.3086 of 1998

PETITIONERS

1. Dr. V.K. Moda, S/o Changamal Moda, aged about 49 years, Moda Clinic, Power House Road, Korba, Tahsil & District Korba (MP)

2. Smt. Rashmi Moda, wife Late Shri Pawan Moda, aged about 38 years, C/o Moda Clinic, Korba, Tahsil and District Korba (MP)

VERSUS

RESPONDENTS

1. The State of Chhattisgarh Through : Secretary, Department of Revenue, Mantralaya, D.K.S. Bhawan, Raipur

2. The Superintending Engineer, Hasdeo Pariyojana Mandal, Rampur Korba District, Korba (MP)

3. The Collector, Korba

4. The Land Acquisition Officer, Hasdeo-Pariyouana Mandal, Janjgir, Distt. Champa-Janjgir (MP)

5. The Additional Collector, Korba Distt. Korba (MP)

Present: Shri Sanjay K Agrawal, counsel for the petitioners.
Shri Yashwant Singh, learned G.A. for the State.

ORAL ORDER
(Passed on 11th September, 2006)

Initially, the subject land owned by the petitioner was sought to be acquired, but, before possession of the subject land was taken over by the State, after passing the award the Government decided not to acquire the land. Accordingly, by exercising its power under Section 48 of the Land Acquisition Act, 1894 (for short 'the Act') it has abandoned

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the acquisition proceedings. When the matter stood thus, the petitioner-owner moved an application, marked as Annexure P/5, to the Collector, Korba, the 3rd respondent herein, to pass appropriate order under sub- Section (2) of Section 48 of the Act. Sub-Section (2) of Section 48 of the Act provides that whenever the Government withdraws from any acquisition proposed in, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land. Since, the Collector did not pass order under sub-Section (2) of Section 48 of the Act, this writ petition is filed.

(2) In the return filed by the Collector, it is asserted that the petitioner did not suffer any damage, because, the possession of the subject land is with the owner himself. The defence raised by the Collector is untenable. The State has not taken over possession of the subject land after the award was passed and before by virtue of the power conferred under sub-Section (1) of Section 48 of the Act, the State Government withdrew land acquisition proceedings. Sub-Section (2) of Section 48 of the Act would deal with only those cases where possession is with the owner himself before the withdrawal of acquisition proceedings. Be that as it may, since the petitioner has made an application to the Collector contending that he has suffered damage on account of land acquisition, it becomes imperative for the Collector to pass appropriate orders under sub-Section (2) of Section 48 of the Act after hearing the petitioner-land owner. Admittedly, the Collector has not yet passed any order under sub-Section (2) of Section 48 of the Act.

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(3) In that view of the matter, I dispose of the writ petition directing the Collector, the third respondent herein, to consider the application of the petitioner Annexure P/5 and pass appropriate orders under sub-Section (2) of Section 48 of the Act after giving reasonable opportunity to the petitioner to submit his case. No costs.

Sd/-
Chief Justice

Kamde